

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gregory Morril	Team: Team # 5	CCRB Case #: 200511003	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/18/2005 10:01 PM	Location of Incident: West 49th Street and 7th Avenue	Precinct: 18	18 Mo. SOL 3/18/2007	EO SOL 3/18/2007	
Date/Time CV Reported Mon, 09/19/2005 2:02 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 09/19/2005 2:02 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Seminara	29512	935723	MTS PCT
2. LT John McAndrew	00000	906761	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Noema Ioffe	18894	933864	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Seminara	Force: Officer Joseph Seminara used physical force against § 87(2)(b)	
B.LT John McAndrew	Force: Lt. John McAndrew used physical force against § 87(2)(b)	

Synopsis

§ 87(2)(b) filed a complaint on the CCRB's on-line website on September 19, 2005. § 87(2)(b) alleges that on September 18, he was walking by the corner of West 49th Street and 7th Avenue in Manhattan, when he observed a street peddler, § 87(2)(b) with whom § 87(2)(b) had no prior relationship standing with his hands behind his back. § 87(2)(b) saw § 87(2)(b) fall onto his knees after being approached by Lt. John McAndrew but could not see with certainty whether Lt. McAndrew kicked § 87(2)(b) or if he merely pulled § 87(2)(b) onto the ground with his hands. In his CCRB interview, § 87(2)(b) did not make any allegations against Lt. McAndrew but did allege that Officer Joseph Seminara grabbed and twisted his neck when he arrested § 87(2)(b) for vending watches without a license. § 87(2)(g)

Summary of Complaint

§ 87(2)(b) filed a complaint on the CCRB's on-line website on September 19, 2005 (encl. 5), provided a telephone statement on September 29 (encl. 7), and was interviewed at the CCRB on October 3 (encl. 8). § 87(2)(g)

§ 87(2)(b) § 87(2)(b) alleges that on September 18, 2005, he was walking by the corner of West 49th Street and 7th Avenue in Manhattan, when he observed a young black male—this individual was identified by investigation as § 87(2)(b) § 87(2)(b) had no relationship to § 87(2)(b) and had never seen him before but described him as a black male with very dark skin in his mid-twenties, standing at 5'7." Two black female police officers dressed in uniform were standing on either side of § 87(2)(b) who had his hands behind his back and appeared to be in handcuffs. Less than one minute later, another officer approached—identified by investigation as Lt. John McAndrew—and said to the two female officers, "Keep him here." § 87(2)(b) did not know Lt. McAndrew's name but described him as a white male with pale skin, 6'0," stocky build, about 40 years old, and dressed in uniform with a white shirt. § 87(2)(b) then saw § 87(2)(b) fall onto his knees, but he could not see if Lt. McAndrew had kicked § 87(2)(b) or if he had used his hands to pull § 87(2)(b) onto the ground. Lt. McAndrew then walked over to a marked police car, and § 87(2)(b) continued walking. It appeared to § 87(2)(b) that § 87(2)(b) had been selling handbags or T-shirts on the street, because there was a black tarp on the ground that appeared to be covering such goods. § 87(2)(b) called 311 right after he witnessed this incident in order to find out how he could file a complaint (which he later filed online). From his cell phone, § 87(2)(b) was able to state with certainty that this incident occurred at 10:01 p.m.

Results of Investigation

CIVILIAN WITNESS STATEMENTS

§ 87(2)(b) § 87(2)(b) provided a telephone statement on October 11, 2005 (encl. 9) with his brother acting as a translator between English and Wolof. § 87(2)(b) was interviewed at the CCRB on October 14, 2005 (encl. 10). A Wolof interpreter was provided by the CCRB for § 87(2)(b) a native of Senegal. § 87(2)(b) a § 87(2)(b) black male, is 6'1" and 165 pounds. § 87(2)(g)

§ 87(2)(b) § 87(2)(b) stated that on September 18, 2005 at approximately 10:00 p.m., he was vending watches on West 49th Street and 7th Avenue. Two plainclothes male officers came from a store and approached § 87(2)(b) and told him not to move. § 87(2)(b) said "Don't worry, don't worry. I'm not going anywhere" to the officers and attempted to surrender to them by raising his hands. § 87(2)(b) did not attempt to run away or resist the officers. An officer—identified by investigation as Officer Joseph Seminara—grabbed § 87(2)(b) by the neck with two hands and tried to twist

it. § 87(2)(b) described Officer Seminara as a white or Hispanic male, about 20-years old with a medium build. § 87(2)(b) said to him, “Please, please I’m not going anywhere.” Officer Seminara held him and sat him down on the sidewalk and told him to put his hands behind him and stretch out his feet. Another officer—who was not identified by this investigation—handcuffed § 87(2)(b). Two female officers dressed in uniform guarded § 87(2)(b) while the other officers left to arrest more street vendors. He was unable to describe the two female officers and could not state what race they were. In his telephone statement, § 87(2)(b)'s brother indicated that a police “boss” “kicked” § 87(2)(b) but could not provide any additional details. In his in-person interview, § 87(2)(b) did not make any such allegations and did not mention having any additional interactions with officers dressed in uniform.

Victim contact attempts: § 87(2)(b) and § 87(2)(b)

Two additional individuals were contacted by the CCRB as potential victims of § 87(2)(b)'s third-party complaint based on arrest reports, before the identity of the victim had been established as § 87(2)(b) § 87(2)(b)

§ 87(2)(b), a § 87(2)(b) black male, provided a telephone statement to the CCRB on October 20 in French (encl. 11) and § 87(2)(b), a § 87(2)(b) black male, provided a telephone statement to the CCRB on November 15 (encl. 12). § 87(2)(b) § 87(2)(b) stated that although he was arrested on the corner of West 49th Street and 7th Avenue for selling handbags on the date and approximate time of this incident, he did not have any contact with black female officers in uniform (as § 87(2)(b) described the witnesses to his complaint) § 87(2)(b), § 87(2)(g)

§ 87(2)(b) § 87(2)(b) stated that he was arrested for selling watches, which he denied being guilty of. Like § 87(2)(b) § 87(2)(b) reported that he did not have any contact with officers in uniform § 87(2)(g)

POLICE OFFICER STATEMENTS

OFFICER JOSEPH SEMINARA (MIDTOWN SOUTH) SUBJECT OFFICER

Arrest report

In an arrest report, Officer Seminara wrote that Officer Noema Ioffe informed him that § 87(2)(b) was selling watches without a Department of Consumer Affairs license. His time of arrest is listed as 10:15 p.m. (encl. 14).

CCRB statement

Officer Joseph Seminara was interviewed at the CCRB on March 2, 2006 (encl. 15). Officer Seminara, a § 87(2)(b)-old white male, is 5’7” and 150 pounds. On September 18, 2006, Officer Seminara was assigned to a Times Square peddler unit, dressed in plainclothes, assigned to a marked van, and was working with Officers Ioffe, Daniel Steller, and Sean Ryan, and Sgt. Richard Mack. Officer Seminara worked from 5:30 p.m. until 2:05 a.m. His memo book reflects that he made one arrest at 8:20 p.m. on West 49th Street and 7th Avenue and Sgt. Mack and Lt. McAndrew were on the scene of location (encl. 13). Lt. McAndrew was dressed in uniform with the white shirt of a supervisor.

Officer Seminara stated that the officers drove to the area and Officer Ioffe was walking around the main avenues of Times Square attempting to catch peddlers in the act of vending without licenses. Officer Seminara was standing on the corner of West 49th Street and 7th Avenue and Officer Ioffe returned and told him that she observed five peddlers selling their goods. Although the peddlers had stopped selling at this point and were standing around West 49th Street and 7th Avenue, Officer Ioffe pointed out to Officer Seminara which of the men had been vending, giving them probable cause to make arrests. Officer Seminara and Officer Ioffe removed their shields and approached the men and said, “Police! Don’t move!” Most of the men started to run away once the officers approached, except for § 87(2)(b) and one other individual who Officer Seminara could not identify. Officer Seminara grabbed onto the left side of § 87(2)(b)'s shirt on the side torso. Officer Seminara told § 87(2)(b) to get onto his knees, but § 87(2)(b) instead got into a “Superman” position on the ground, meaning that he flopped himself onto the pavement with his stomach down. Officer Seminara never made contact with § 87(2)(b)'s head or twisted his neck.

While Officer Seminara was handcuffing § 87(2)(b) on the ground, he could see from the corner of his eye that the man who Officer Ioffe was attempting to handcuff was not complying with her verbal commands to surrender. Once Officer Seminara handcuffed § 87(2)(b) he saw that Officer Ioffe’s perpetrator started to

run southbound on 7th Avenue. At the same time, an uniformed foot post officer approached Officer Seminara. Officer Seminara did not know who this officer was—but identified her as a white female from an unknown command—and asked her to guard § 87(2)(b) while he gave chase to assist Officer Ioffe. Lt. McAndrew also arrived in a marked RMP and Officer Seminara explained to him that Officer Ioffe needed assistance. Officer Seminara and Lt. Andrew both chased after Officer Ioffe together, and the foot post stayed behind to guard § 87(2)(b). § 87(2)(b) remained in the same position that he had been in when Officer Seminara handcuffed him.

Officer Seminara did not remember whether he caught up with Officer Ioffe and saw that she was OK or if he received confirmation via radio, but he eventually caught up with her. This second individual was not apprehended, and Officer Ioffe quickly lost sight of him when he fled down 7th Avenue. No other officers had physical contact with § 87(2)(b). When Officer Seminara returned to § 87(2)(b) he was laying in the same position that they had left him in being guarded by the same uniformed officer. Officer Seminara had been with Lt. McAndrew for the duration of the five to six minutes that Officer Seminara was away from § 87(2)(b). Lt. McAndrew's driver—possibly a female—most likely stayed behind with the RMP, as she wasn't giving chase with them. Officer Seminara placed § 87(2)(b) into a marked police van right after he returned to the scene. Officer Seminara saw other arrested individuals being placed into the van as well by their arresting officers, but he did not remember which officers did so or whether they were placed inside at the same location as § 87(2)(b). Lt. McAndrew did not have any physical contact with § 87(2)(b) and never kicked him.

Lt. John McAndrew (Midtown South) Subject Officer

Lt. John McAndrew was interviewed at the CCRB on April 18, 2006 (encl. 18). Lt. McAndrew, a § 87(2)(b)-old white male, is 5'10" and 195 pounds with medium skin tone. Lt. McAndrew was assigned as special operations supervisor on the date of this incident, which includes supervising the plainclothes peddler teams. Lt. McAndrew was dressed in uniform with a white shirt and believed that he was working on foot. He did not know with whom he was working on this date and did not have any memo book entries to that effect (encl. 17). Lt. McAndrew had no independent recollection of this incident. Lt. McAndrew was shown a photograph of § 87(2)(b) taken at the CCRB on October 14, 2005 and told that Officers Seminara and Ioffe had engaged in a foot chase of an unapprehended street peddler on the date of this incident, but Lt. McAndrew did not specifically remember engaging in any foot chase of peddlers on this date. Lt. McAndrew did not remember having any physical contact with any of the peddlers or § 87(2)(b). Lt. McAndrew stated that in general, peddlers in Times Square tend to flee from police officers and chasing after them is not an unusual occurrence for him. Looking at the arrest report and property vouchers for § 87(2)(b) Lt. McAndrew stated that he did not believe that he was involved in this arrest, because § 87(2)(b) should have been charged with selling counterfeit goods (according to the property voucher, watches were seized) yet he was only charged with vending without a license. Lt. McAndrew stated that had he been intricately involved in the arrest, he would have insured that the more serious charges were leveled against § 87(2)(b).

Officer Noema Ioffe (Midtown South) Witness Officer

Officer Noema Ioffe was interviewed at the CCRB on January 24, 2006 (encl. 16). Officer Ioffe, a § 87(2)(b)-year-old white female, is 5'4" and 140 pounds. Officer Ioffe did not have any memo book entries regarding this incident and stated that she does not carry her memo book on plainclothes assignments. Officer Ioffe had no specific memory of any interactions with § 87(2)(b). Officer Ioffe viewed a photograph of § 87(2)(b) but did not specifically remember anything about his arrest. Officer § 87(2)(b) did remember conducting a peddler operation on this date and observing about three people selling watches and sunglasses in the vicinity of West 49th Street and Broadway, but she was not the arresting officer and did not remember anything distinctive about the arrests. Officer Ioffe is not sure which one of the officers actually apprehended the three unlicensed vendors arrested on this day. None of the officers with whom Officer Ioffe was working on this date were dressed in uniform. There were no other female officers with Officer Ioffe. Officer Ioffe believed that she observed all of the arrested peddlers get into a marked police van. She believes that they did not have any contact with uniformed officers and does not recall seeing any black female uniformed officers or a white male uniformed officer in a white shirt. Officer Ioffe never saw an officer twist § 87(2)(b)'s head.

§ 87(2)(g)

One briefcase and plastic bag containing watches were vouchered as “peddler property.” § 87(2)(b) s cell phone was vouchered for safekeeping (encl. 19).

A list of all arrests for Midtown South indicates that § 87(2)(b) and § 87(2)(b) were both arrested five minutes before § 87(2)(b) at 10:10 p.m. § 87(2)(b) was arrested at West 49th and 7th Avenue in Manhattan for § 87(2)(b). § 87(2)(b) was arrested for § 87(2)(b) (encl. 21-22).

Lt. McAndrew is not listed on the roll call for 4:00 p.m. to midnight shift on September 16, 2005 for Midtown South and no one is assigned as lieutenant's operator (encl. 22b).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

This complaint represents the first for § 87(2)(b) and § 87(2)(b) (encl. 1-2).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer Seminara has been a member of the service for 1 year and has no previously substantiated CCRB complaints. Lt. McAndrew has been with the NYPD for 11 years and has no previously substantiated CCRB complaints.

Conclusions and Recommendations

Officer Seminara acknowledged that he used physical force against § 87(2)(b) to effect his arrest. Although Lt. McAndrew did not have a recollection of this incident, he was identified as the subject of this complaint based on § 87(2)(b)'s physical description of him. § 87(2)(b) reported seeing a white male officer dressed in the white shirt of a NYPD supervisor interact with § 87(2)(b). Lt. McAndrew is a white male and was dressed in uniform with a white shirt on the night of this incident. Officer Seminara confirmed that Lt. McAndrew arrived at the scene of this complaint before § 87(2)(b) departed.

Facts, Issues, and Credibility

§ 87(2)(g)

[REDACTED]

Allegation A- Force: Officer Joseph Seminara used physical force against § 87(2)(b)

§ 87(2)(b) alleged that Officer Seminara grabbed his neck and attempted to twist it while placing him under arrest. Officer Seminara testified that § 87(2)(b) flopped himself onto the ground, when he attempted to place him in handcuffs and that the only force that he used against § 87(2)(b) was grabbing onto his torso in an attempt to prevent him from fleeing. § 87(2)(g)

[REDACTED]

Allegation B- Force: Lt. John McAndrew used physical force against § 87(2)(b)

§ 87(2)(g)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date:

